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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 24th November, 2006:—

BILL No. 59 of 2006

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 2006.
2. In the Ninth Schedule to the Constitution, after entry 284 and before the Explanation, the following entry shall be inserted, namely:—

"285. The Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 (Kerala Act 19 of 2006)."

Short title.

Amendment of the Ninth Schedule.

STATEMENT OF OBJECTS AND REASONS

The Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 is meant for ensuring social justice, equality of opportunity and academic excellence, especially to weaker sections in the society, whose children aspire for higher education in privately owned self-financing professional colleges and institutions in Kerala. This legislation ensures admission based on merit. It provides for reservation for socially and economically weaker sections. It seeks to ensure academic excellence in these institutions.

This legislation is a serious attempt to put an end to capitation fee surreptitiously charged by the private self-financing institutions. Besides, the present fee structure of these institutions is exorbitant and prohibitive, and prevents the students belonging to weaker sections from joining these educational institutions.

The educational standard in many of these institutions is not upto the mark due to lack of required infrastructure and educational facilities. This legislation seeks to put an end to this problem. It also stipulates that the students should be admitted to courses based on their performance in the common entrance examination conducted by the university.

As this piece of legislation aims at ensuring equity and excellence in professional education and prevents the various malpractices in this field, vested interests are up in arms against this Act and want to challenge it in court.

As it is an important legislation, it has to be provided protection by including it in the Ninth Schedule to the Constitution.

Hence this Bill.

NEW DELHI;
July 19, 2006

C.K. CHANDRAPPAN

BILL No. 62 OF 2006

A Bill to amend the Disaster Management Act, 2005.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Disaster Management (Amendment) Act, 2006.

(2) It extends to the whole of India.

Short title,
extent and
commencement.

(3) It shall come into force on such date as the Central Government may, by notification in the official gazette, appoint.

53 of 2005.

2. In section 2 of the Disaster Management Act, 2005, in *clause (d)*, after the word 'calamity', the words "such as tsunami, earthquake, sea erosion and landslide" shall be inserted.

Amendment
of section 2.

STATEMENT OF OBJECTS AND REASONS

The occurrence of calamities—both natural and manmade, in the recent times have shown that the bureaucratic interpretations rather than the spirit of legislation is being applied to decide as to what can be considered a “disaster”. This has assumed such proportions that genuine victims of disaster are being denied their legitimate due. While Tsunami and earthquakes are considered “disaster”, landslide in the hills and mountains and sea erosion in the coastal areas are not considered as “disaster”. The interpretation appears to be strange as well as arbitrary and it affects the life of thousands of people, who are denied the benefits of this Act.

Recently in Kerala, there were cases of sea erosion in many areas in coastal belt particularly in the districts of Trissur, Ernakulam, Alleppey, Quilon, Thiruvananthapuram, Kozhikode, Kannur and Kasargod. Landslide took place in the hills of Trissur, Wynad and Idukky. The disaster affected the lives of thousands. They lost their valuable lands, cultivated fields and habitats. The sea walls meant for the protection of land was destroyed or badly damaged. The same has happened in many places in the coastal and hilly areas all over the country. But the victims of such calamities are denied the benefits of this Act.

It is this experience which necessitates these amendments. In the definition of disaster, if the main types of disasters are clearly mentioned, the ambiguity will be removed and then there will be no scope for arbitrariness in interpretations.

This amendment has been moved to plug that loophole.

NEW DELHI;
July 19, 2006

C.K. CHANDRAPPAN.

BILL No. 65 OF 2006

A Bill to provide for compulsory harvesting of rainwater by every household, business establishment and Government building, in order to ensure availability of water and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Rainwater (Compulsory Harvesting) Act, 2006.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. It is hereby declared that it is expedient in public interest that the Union Government undertake measures to preserve and harvest rainwater in the country for augmenting drinking water availability in the country.

Declaration.

3. In this Act, unless the context otherwise requires,—

Definitions.

(a) “appropriate Government” means in the case of a State, the Government of that State and in all other cases, the Central Government;

(b) "business establishment" means and includes any building used as an office or a factory in connection with any trade or business;

(c) "government building" means and includes the offices of the Ministries, departments, public sector enterprises, statutory bodies or bodies owned or administered by the appropriate Government and autonomous bodies, local self Government bodies and residential areas of Government employees provided by the appropriate Government;

(d) "household" means a dwelling unit of any description; and

(e) "prescribed" means prescribed by rules made under this Act.

Compulsory
rainwater
harvesting in
Government
buildings.

4. Notwithstanding anything contained in any other law for the time being in force, the appropriate Government shall construct and provide necessary infrastructure for rainwater harvesting in the buildings owned by it in such manner and within such time as may be prescribed.

Compulsory
rainwater
harvesting by
the
households
and business
establishments.

5. (1) Notwithstanding anything contained in any other law for the time being in force, every household and business establishment shall compulsorily adopt measures for rooftop rainwater harvesting in such manner and within such time as may be prescribed.

(2) It shall be the duty of the head or *karta* of the household to implement the provisions of sub-section (1).

Duty of the
appropriate
Government
to provide
and protect
water bodies.

6. It shall be the duty of the appropriate Government to construct/repair conventional water bodies such as wells, tanks, ponds, creeks, watersheds or other water bodies to preserve the rainwater so as to recharge the levels of ground water to fulfil the purposes of this Act.

Appropriate
Government
to prepare an
action plan to
educate the
masses about
rainwater

7. The appropriate Government shall, as soon as possible, prepare an action plan to educate the masses about the technology and benefits of rooftop rainwater harvesting and associate Non-Governmental Organisations and other such agencies or institutions, as it may deem fit, for the purpose in such manner as may be prescribed.

Central
Government
to provide
requisite
funds

8. The Central Government shall, after due appropriation made by the Parliament by law in this regard, make available requisite and adequate funds to the States and Union Territories for carrying out the purposes of this Act.

Punishment.

9. Any person violating the provisions of this Act, shall be punished with simple imprisonment for a term which may extend to one year or with a fine which may extend to rupees one lakh or with both.

Act to have
overriding
effect.

10. The provisions of this Act and rules made thereunder, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but save aforesaid, the provisions of this act, shall be in addition to and not in derogation of any other law, for the time being in force, dealing with the subject matter of this Act.

Power to
make rules.

11. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

It is estimated that our country receives rainfall of about four thousand billion cubic metres every year and major part of this rainwater goes waste as it falls into the sea through the rivers of our country. This huge wastage of rainwater is taking place in spite of the fact that there is a severe shortage of drinking water throughout the country. Water is a scarce resource and its availability for drinking and other household purposes in the country as a whole is hardly as per requirement-more so in the desert and drought prone areas. The only way to overcome this problem is to prevent the wastage of rainwater by conserving it through harvesting and recharging the ground water levels.

Identification of the areas not receiving normal rainfall with the help of reconnaissance of each and every hamlet of the country, for success of this programme is the need of the hour. The private sector as well as the non-governmental organisations have to play a major role in physical and financial terms, in order to achieve the goal of rainwater harvesting. To save the planet earth, we have to make rooftop rainwater harvesting a movement of the masses, in which, the Government, corporates and every household would participate and preserve the rainwater which is the purest form of water. This will increase the level of ground water which can be used for drinking and other purposes. Hence, it has become necessary to make rooftop rainwater harvesting mandatory throughout the country to overcome the water scarcity which otherwise will worsen further in near future if we do not act now.

Hence this Bill.

NEW DELHI;
July 21, 2006.

KRISHNA TIRATH.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for creating infrastructure for compulsory rainwater harvesting in Government buildings. Clause 6 provides that the appropriate Government shall construct, repair and protect water bodies. Clause 7 provides that the appropriate Government shall give publicity to benefits of rainwater harvesting and provide assistance to non-governmental organisations and private sector for the purpose of creation of rainwater harvesting infrastructure. Clause 8 provides that Central Government shall provide requisite funds to the States and Union Territories for carrying out the purposes of the Bill. Therefore, the Bill, if enacted, is likely to involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees one thousand crore is likely to be involved as recurring expenditure per annum.

A non-recurring expenditure to the tune of rupees five thousand crore is also likely to be incurred from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

BILL NO. 72 OF 2006

A Bill to provide for setting up of an Electoral Reforms Commission and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Electoral Reforms Commission Act, 2006.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Electoral Reforms Commission

2. (1) The Central Government shall, within three months from the date of commencement of this Act, set up an Electoral Reforms Commission.

(2) The Commission shall consist of:

(i) a retired judge of the Supreme Court, who shall be the Chairman of the Commission, to be appointed in consultation with the Chief Justice of India;

(ii) one retired Chief Election Commissioner as member; and

(iii) one serving Election Commissioner to be appointed in consultation with the Chief Election Commissioner, as member.

(3) The Commission shall have its office in New Delhi.

(4) The Central Government shall provide such number of officers and staff to the Commission as is required for its efficient functioning.

3. (1) The Commission shall examine the existing electoral system and recommend to the President the reforms, needed in the system.

(2) Without prejudice to the generality of the provision of sub-section (1), the Commission shall examine the following:—

(i) proportional representation election system or the *List system* in at least fifty per cent of the total constituencies of Lok Sabha/Legislative Assemblies of the States and Union territories including provision of fifty per cent reservation for women therein;

(ii) provision of fifteen per cent reservation for women in other constituencies of Lok Sabha/Legislative Assemblies of the States and Union territories;

(iii) provision of reservation of one-third of seats for women in the Council of States filled up on the basis of election as well as nomination;

(iv) method of determining constituencies for the purpose of extending reservation to various groups or individuals as per the provisions of different laws;

(v) state funding of elections;

(vi) putting restriction on various activities including plying of private vehicles and sale of liquor during elections; and

(vii) any other matter connected with the conduct of elections to the House of the People, Council of States, Legislative Assemblies of States and Legislative Councils.

4. The Commission shall submit its report to the President as soon as possible, but not later than one year after the date of its constitution.

Functions of the Commission.

5. (1) The Central Government shall lay the report of the Commission on the Table of each House of Parliament within a period of thirty days of its submission to the President.

(2) The Central Government shall implement the recommendations contained in the report of the Commission and present an 'action taken report' within one year from the date of receipt of the report.

Commission to submit its report within one year.

Laying of Report before each House of Parliament and presentation of an action taken report.

STATEMENT OF OBJECTS AND REASONS

India is one of the countries in the world with rich experience in democracy, democratic institutions and successful practice of democracy. Democratic elections is one of the essential ingredients of democracy. But there are seen certain glaring weaknesses in our electoral system. These have to be rectified at the earliest to strengthen democracy and democratic institutions in the country.

In the present system of elections, if a candidate gets more votes than his nearest opponent, he gets elected. The votes polled may be a very small percentage and the winning candidate wins the seat with negligible support. The polling percentage, of late, is gradually coming down everywhere. Money power, caste politics, religious considerations play a vital role in deciding the fate of the candidates. There are many other issues too, such as enabling women to be represented in greater numbers in legislatures, state funding of elections to remove money power from our electoral system, introducing innovative methods of election to ensure majority support for winning candidate and so on, which need closer examination by an expert body.

In view of this, an Electoral Reforms Commission is proposed to be set up which shall examine all issues relating to our present electoral system threadbare and come up with recommendations to make it more vibrant and people-responsive and to strengthen and sustain our democracy.

Hence the Bill.

NEW DELHI;
July 25, 2006.

C.K. CHANDRAPAN

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for setting up of an Electoral Reforms Commission. It further provides that the Commission shall have its own office and staff. Clause 5 provides for the laying of report of the Commission on the Table of each House of Parliament and as such some expenditure will be involved in the printing etc. of the sufficient number of copies of the report. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a non-recurring expenditure of rupees fifty crore will be involved.

No recurring expenditure is likely to be involved.

BILL No. 63 OF 2006

A Bill to provide for the prevention of and protection against custodial crimes and for compensation in cases of custodial offences, for appointment of Vigilance Commissioner and District Vigilance Commissioners for custodial offences and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Custodial Crimes (Prevention, Protection and Compensation) Act, 2006. Short title and commencement.
- (2) It shall come into force at once.
2. In this Act, unless the context otherwise requires,— Definitions.
 - (a) “custodial crime” or “custodial offence” means an offence caused against any arrested person or a person in custody when that person was in the custody of a police officer or a public servant who has power under any law to arrest and detain a person in custody, by the police officer or by the public servant concerned having the custody of that person during that period;
 - (b) “custody” shall include both legal and illegal arrest or custody;

(c) "District Vigilance Commissioner" means the District Vigilance Commissioner for custodial offences appointed under sub-section (3) of section 17;

(d) "Government" means the Government of a State or the Government of a Union Territory, as the case may be;

(e) "prescribed" means prescribed by rules made by the Government under this Act;

(f) "Vigilance Commissioner" means the Vigilance Commissioner for custodial offences appointed under sub-section (1) of Section 17; and

(g) words and expressions used herein and not defined but defined in the Indian Penal Code or the Code of Criminal Procedure, 1973 shall have the meanings respectively assigned to them in these codes.

Presumption in custodial offences including death or injury.

1 of 1872

3. (1) Notwithstanding anything contained in the Indian Evidence Act, 1872 or in any other law in force, in a prosecution of a police officer or any public servant for a custodial offence, including death or injury in custody, the Court may presume that the offence, death or injury was caused by the police officer or the public servant having the custody of that person during that period.

(2) The Court, in deciding whether or not to draw a presumption under sub-section (1), shall have regard to all the relevant circumstances including, in particular, (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of any medical practitioner who might have examined the victim, and (d) evidence, if any, of any magistrate who might have recorded the victim's statement or attempted to record it.

Conditions precedent to arrest.

4. A police officer arresting a person who has been concerned in an offence under any law must be reasonably satisfied, and must record such satisfaction, relating to the following matters, namely:—

(a) that the complaint, information or suspicion is not only in respect of an offence having been committed, but is also in respect of the complicity of the person to be arrested in that offence;

(b) that the arrest is necessary in order to bring the movement of the person to be arrested under restraint, so as to inspire a sense of security in the public or to prevent the person to be arrested from evading the process of law or to prevent him from committing similar offence or to prevent him from interfering with evidence or witnesses or from indulging in violent behaviour in general; and

(c) that the arrest, and not a service of notice of appearance under sub-section (1) of section 5, is absolutely necessary.

Notice to appear.

5. (1) A police officer may instead of arresting the person concerned, issue to him a notice of appearance requiring him to appear before the police officer issuing the notice at such place as may be specified in the notice and to co-operate with the police officer in the investigation of the offence mentioned in the notice.

(2) It shall be the duty of a person to whom notice has been issued under the sub-section (1) to comply with the terms of the notice and so long as such a person continues to do so, he shall not be arrested in respect of the offence mentioned in the notice, unless for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(3) Where a person to whom notice has been issued under sub-section (1), fails, at any time, to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent court.

Presumption as to submission to custody.

6. Where a person is to be arrested, then, unless the circumstances indicate to the contrary, his submission to custody on an oral intimation of arrest shall be presumed, and unless the circumstances otherwise require, the police officer shall not actually touch the person of the one being arrested.

7. (1) Whenever a person is arrested by a police officer, intimation of the arrest shall be immediately sent by the police officer (along with intimation about the place of detention) to the following person, namely:—

(a) a relative or friend or other person known to the arrested person, as may be nominated by the arrested person;

(b) failing (a) above, the local legal aid committee.

Right to intimation of arrest to relative, friend or other person, and custody memorandum.

(2) Such intimation shall be given by telephone or telegram or by any other method as may be convenient and as may convey the intimation fast enough and the fact that such intimation has been sent shall be recorded by the police officer under the signature of the arrested person.

(3) The police officer shall prepare a custody memorandum and body receipt of the person arrested, duly signed by him and by two witnesses of the locality where the arrest has been made, and deliver the same to the relative of the person arrested, if he is present at the time of arrest or, in his absence, send the same alongwith the intimation of arrest to the person mentioned in sub-section (1).

(4) The custody memo mentioned in sub-section (3) shall contain the following particulars:—

(a) name of the person arrested and father's name or husband's name;

(b) address of the person arrested;

(c) date, time and place of arrest;

(d) offence for which the arrest has been made;

(e) property, if any, recovered from the person arrested and taken into charge at the time of the arrest; and

(f) any other relevant particular.

8. The person arrested shall have the right to have the presence and advice of a legal practitioner during interrogation and his legal practitioner shall be allowed to remain present and to advise him.

Right to Legal Practitioner during interrogation.

9. A police officer effecting an arrest shall inform the person arrested as soon as he is brought to the police station, of the rights of the arrested person under sections 7 and 8 and shall make an entry in the police diary about the following facts:—

Record in police diary as to rights of the arrested person.

(a) the name of the person who was informed of the arrest;

(b) the fact that the person arrested has been informed of his rights under sections 7 and 8;

(c) the name of the legal practitioner of the person arrested; and

(d) the fact that a custody memorandum has been prepared as required by sub-sections (3) and (4) of section 7.

2 of 1974.

10. When an arrested person is produced before a Magistrate, the Magistrate shall satisfy himself that the provisions of sections 4,5,6,7,8,9 and sub-section (1) and (2) of section 11 have been duly complied with and shall further inform the arrested person of his right to medical examination under section 54 of the Code of Criminal Procedure, 1973.

Magistrate's satisfaction as to compliance with certain sections.

11. (1) Except in unavoidable circumstances, no male child below the age of fifteen years or a female shall be arrested after sunset and before sunrise, and where such unavoidable circumstances exist, the police officer making the arrest shall, by making a written report, obtain the prior permission of the immediate superior officer not below the rank of an inspector for effecting such arrest, if the case is one of extreme urgency, he shall, after making the arrest, forthwith report the matter in writing to his such immediate superior officer, with the reason for arrest and the reason for not taking prior permission as aforesaid and shall also make a similar report to the Magistrate within whose jurisdiction the arrest has been made.

Provisions as to male child and female.

(2) Where a female is to be arrested, then unless the circumstance otherwise require and unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making the arrest.

Explanation.—The provisions of sub-section (2) are in addition to the provisions of section 6.

(3) A female in custody shall be escorted by the Matron or Female Warden or Female Police Officer, if required to leave the female enclosure, such matron or female warden or female police officer shall remain with the female who is in custody or in prison till her return to the enclosure or release from the custody or the jail.

(4) A female relative of the female in custody shall be allowed to accompany the female who is in custody during her transit from one enclosure to another or for the purpose of being taken to the court or for investigation.

(5) A male child of less than fifteen years of age in custody shall be allowed to be accompanied by his relative during his transit from one enclosure to another or for the purpose of being taken to the court or for investigation.

Medical examination of the arrested person or the person in custody.

2 of 1974

12. (1) Where under section 54 of the Code of Criminal Procedure, 1973 or otherwise, a Magistrate directs the examination of the body of an arrested person or a person under custody, the said examination shall be conducted by a Registered Medical Practitioner or through a Government Hospital available, as the Magistrate may, direct.

(2) A female arrested or in custody shall be examined by and under the supervision of only a lady medical practitioner as the Magistrate may direct and the examination shall be conducted with strict regard to decency.

(3) The medical practitioner to whom an arrested person or a person in custody is forwarded under sub-section (1) or (2), shall without delay examine him/her and prepare a record and specifically record the following details about the person examined:—

- (1) the name and address of the person examined and of the person by whom he/she was brought;
- (2) the age of the person;
- (3) the injury external and internal, if any, on the persons;
- (4) general mental condition of the person;
- (5) other material particulars and any other relevant details; and
- (6) where the person is a woman, whether or not she is pregnant.

(4) The report of the medical practitioner shall precisely state the reasons for any conclusion arrived at by the medical practitioner and the exact time of commencement and completion of the medical examination.

(5) The medical practitioner shall without delay forward his report to the Magistrate who had directed the examination of the body.

(6) The person examined shall be entitled to a copy free of cost of the report of the medical practitioner under this section as soon after the Magistrate received the report under sub-section (5).

Information of custodial crimes and procedure thereafter.

13. (1) Every information relating to the commission of a custodial crime or offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in book to be kept by such officer in such form as may be prescribed in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant and shall also be forwarded immediately to the Vigilance Commissioner or the District Vigilance Commissioner as the case may be.

(3) Any person (including Legal Aid Centre or Non-Governmental Organisation or any friend or relative) aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may file a petition giving the substance of such information—

(a) before the Chief Judicial Magistrate in case of custodial offences other than those involving death of the victim, or
(b) before the Sessions Judge in case of custodial offence involving death.

(4) The person filing a petition under sub-section (3) shall also forward a copy of the petition to the Vigilance Commissioner or the District Vigilance Commissioner, as the case may be.

(5) The Chief Judicial Magistrate or the Sessions Judge, as the case may be, if satisfied on a preliminary enquiry that there is a *prima facie* case, may himself hold enquiry into the complaint made under sub-section (3) or direct other Judicial Magistrate or Additional Sessions Judge, as the case may be, to hold an enquiry and direct the ministerial officer of the Court to make a complaint to the Competent Court in respect of offence that may appear to have been committed.

2 of 1974

(6) Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1973, the Competent Court shall on a complaint made under sub-section (5) take cognizance of the offence and try the same.

2 of 1974

(7) The Chief Judicial Magistrate or the Sessions Judge, as the case may be, may obtain the assistance of the Vigilance Commissioner or the District Vigilance Commissioner or any public servant or authority as he may deem fit in holding the enquiry under sub-section (5).

Compensation
in custodial
offence.

14. (1) Notwithstanding the provisions of section 357 of the Code of Criminal Procedure, 1973 where the court convicts a public servant of a custodial offence including an offence resulting in death or bodily injury, being an offence constituted by an act of such public servant against a person in his custody, the provisions of this section shall apply.

(2) The Court, when passing judgement in any case to which this section applies, shall order that the Government in connection with the affairs of which such public servant was employed at the time when such act was committed, shall be liable jointly and severally with such public servant to pay, by way of compensation, such amount as may be specified in the order.

(3) An order for payment of compensation under this section may also be made by an appellate court or by the High Court or Court of Session when exercising its powers of revision.

(4) While rewarding compensation in any subsequent suit relating to the same matter, the civil court shall take into account any sum paid or recovered as compensation under this section.

(5) The amount awarded under this section not be less than:

(a) rupees twenty five thousand in case of bodily injury, not resulting in death;
(b) rupees two lakh, in case of death.

(6) In fixing the amount of compensation under this section, the court shall, subject to the provisions of sub-section (5) take into account all relevant circumstances, including (but not necessarily limited to) the following:

(a) the type and severity of the injury suffered by the victim;
(b) the mental anguish suffered by the victim;
(c) the expenditure incurred or likely to be incurred on the treatment and rehabilitation of the victim;
(d) the actual and projected earning capacity of the victim and the impact of its loss on the persons entitled to compensation and other members of the family;

- (e) the extent, if any, to which the victim himself contributed to the injury;
- (f) the expenses incurred in the prosecution of the case.

(7) In case of the death or permanent disablement of the victim, the court may take into account the estimated annual income of the victim as multiplied by the number of years of his estimated span of life.

(8) Pending final determination of the proceeding, the Court may award, by way in interim relief, such compensation as it may think proper in the circumstances of the case at any stage of the case, even before judgement of conviction is passed.

(9) The Government may recover any amount paid by it as compensation under this section wholly or partly as it may think proper, from the delinquent public servant.

15. Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973, no previous sanction of the Central or State Government shall be necessary for prosecution of a police officer or a public servant accused of any custodial offence alleged to have been committed by him.

2 of 1974.

No previous sanction of Government for custodial offence prosecutions.

Punishment for knowingly disobeying any direction of law.

Vigilance Commissioner and District Vigilance Commissioner.

16. Whoever, being a police officer or a public servant—

(a) knowingly disobeys any direction of any law prohibiting him from requiring the attendance at any place of any persons for the purpose of investigation into an offence or other matter, or

(b) knowingly disobeys any other direction of the law regulating the manner in which he shall conduct any investigation or arrest, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

17. (1) Every State Government and the Government of a Union Territory shall, by notification in the official Gazette, appoint a person to be known as the Vigilance Commissioner for Custodial Offences.

(2) The Functions and powers of the Vigilance Commissioner shall be to—

(a) exercise superintendence over all investigations and prosecutions with respect to custodial offences;

(b) give directions to the concerned officers in all matters relating to investigation of and prosecution for custodial offences;

(c) review the progress of investigations and prosecution with respect to custodial offences;

(d) tender advice to the Government on all matters relating to custodial offences;

(e) call for information from any concerned officer or authority about custodial offences and about action taken on his recommendation or advice;

(f) collect or cause to be collected such statistics or data and other information as may be necessary for appropriate and effective discharge of the functions of the Commission;

(g) hold any inquiry pursuant to sub-section (7) of section 13; and

(h) discharge any other function as may be prescribed.

(3) The Government may, in consultation with the Vigilance Commissioner, appoint by notification in the Official Gazette, a District Vigilance Commissioner for each District.

(4) The Government may authorise a District Vigilance Commissioner to have jurisdiction over another district also for which no separate District Vigilance Commissioner has been appointed.

(5) A District Vigilance Commissioner shall have such powers and perform such function as may be entrusted to him by the Vigilance Commissioner appointed under sub-section (1) and shall discharge his duties subject to his directions.

(6) The qualification for appointment as Vigilance Commissioner or District Vigilance Commissioner and their terms and conditions of service shall be such as may be prescribed.

(7) The Government may, in consultation with Vigilance Commissioner; make rules with respect to strength of the staff of the Vigilance Commissioner or District Vigilance Commissioners and their conditions of service.

(8) The Government shall in making any rules or regulations governing matters relating to custodial offences, consult its Vigilance Commissioner.

(9) All directions relating to recording and investigation of and prosecution for, custodial offences given by the Vigilance Commissioner or the District Vigilance Commissioner shall be binding upon the officer concerned.

(10) The Vigilance Commissioner shall present annually a consolidated report on his functioning and on the administration of this Act to the Government, and the Government shall cause a copy thereof, together with its memorandum, to be laid before each House of the State Legislature within four months from the date of the receipt of the report by the Government or till the Legislature meets, next, whichever is later.

18. (1) The State or the Union Territory Government, as the case may be, may by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of the Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing process, such rules may provide for all or any of the following matters, namely—

(a) the form of the register as to information in respect of custodial crimes or offences maintained under section 13;

(b) the qualifications for appointment as Vigilance Commissioner or District Vigilance Commissioner and their terms and conditions of service under sub-section (6) of section 17;

(c) the strength of the staff and their conditions of service under sub-section (7) of section 17;

(d) any other power or function of the Vigilance Commissioner to be prescribed under clause (h) of sub-section (2) of section 17.

19. Every rule made by the Government under this Act shall be laid as soon as may be after it is issued or made, before each House of the Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Rules to be laid before Legislature.

STATEMENT OF OBJECTS AND REASONS

Incidents of custodial crimes are a matter of serious concern and a disturbing factor in the society. They reflect 'betrayal of custodial trust by a public servant against the defenceless citizen.' As the Supreme Court has observed in *Kishore Singh V. State of Rajasthan* (AIR 1982 SC 624)—

"nothing is more cowardly and unconscionable than a person in police custody being beaten up, and nothing inflicts a deeper wound on our constitutional rights."

The constitutional and statutory framework in India contains a number of provisions safeguarding the liberty and the life of an individual. Nevertheless, there is a pressing need to supplement these safeguards to deal effectively with custodial offences which represent an onslaught on the law, human dignity and human right of the defenceless and vulnerable. There are important judicial pronouncements on the subject. In addition, the Law Commission, the National Police Commission, the National Human Rights Commission, etc. have all made several recommendations.

Provisions against custodial crimes require amendments to a number of Central Acts like the Indian Penal Code the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and others. Instead of these scattered amendments, it is, however, desirable to have a comprehensive legislation on the subject for the convenience of those in custody, their relatives, the concerned officials and the human rights organizations.

The Bill seeks to provide for prevention of and protection against custodial crimes, for compensation in case of custodial offences, for appointment of Vigilance Commissioners and District Vigilance Commissioners, and for matters connected therewith and incidental thereto.

NEW DELHI;
July 26, 2006

MOHAN SINGH.

FINANCIAL MEMORANDUM

Clause 14, sub-clause (2) provides for payment of compensation by Government/public servants concerned to the victims of custodial offence. Clause 17, sub-clause (1) provides for appointment of Vigilance Commissioner for custodial offences and sub-clause (3) provides for District Vigilance Commissioners, sub-clause (6) authorizes the Government of the State or the Union territory to determine their terms and conditions of services. Sub-clause (7) of the said clause 17 provides for the staff of the Vigilance Commissioners and the District Vigilance Commissioners. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India or the Consolidated Fund of respective States, as the case may be.

A rough estimate of non-recurring expenditure to every State is about rupees fifteen lakh to set up the office of the Vigilance Commissioner and the District Vigilance Commissioners. The recurring expenditure towards pay and allowances by each State is estimated to be approximately rupees fifty lakh per annum.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of Clause 13 of the Bill authorizes the Government of the State or the Union territory, as the case may be, to prescribe the form of the register as to information in respect of custodial offences.

2. Sub-clause (6) of Clause 17 empowers the concerned Government to prescribe by rules made under the Act, the qualification for appointment as Vigilance Commissioner or District Vigilance Commissioners and to fix their terms and conditions of service.

3. Sub-clause (7) of clause 17 lays down that the strength of the staff for the Vigilance Commissioner and the District Vigilance Commissioners and their conditions of service be prescribed by the Government concerned.

4. Clause 18 of the Bill empowers the State or the Union territory Government to make rules, by notification in the Official Gazette, for the purpose of carrying out the provisions of the Bill. In particular, such rules may provide for all or any of the matters mentioned in paragraphs 1 and 2 above.

5. Clause 19 provides that rules made under the Bill are required to be laid before the Legislature.

6. The matters in respect of which rules may be made are generally matters of procedure or administrative details and it is not practicable to make detailed provisions for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 66 OF 2006

A Bill further to amend the Criminal Law Amendment Act, 1932.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

Short title
and
commencement.

1. (1) This Act may be called the Criminal Law Amendment (Amending) Act, 2006.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Omission of
section 7.

2. Section 7 of the Criminal Law Amendment Act, 1932 (hereinafter referred to as the principal Act), shall be omitted.

Amendment
of section 9.

3. In section 9 of the principal Act,—

(i) in clause (ii), for the words and figures "sections 5 or 7", the word and figure "section 5" shall be substituted; and

(ii) clause (iv) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Criminal Law Amendment Act was passed in 1932 by the then British Government in order to suppress the civil disobedience movement launched by the torch-bearers of freedom struggle under the leadership of Mahatma Gandhi. The salt struggle was at its peak. Congressmen were picketing the Government offices. In order to kill the movement, British Government officials wanted some barbaric laws to deal the non-violent freedom fighters with iron hands. This black law, a symbol of colonial power, is still being frequently used by the police in free India. All the movements are being suppressed in the same old fashion. Police usually invokes this draconian law, particularly section 7 of this Act, against all those agitating peacefully to express just and genuine grievances of the people.

The Bill, therefore, seeks to omit section 7 of the said Act.

NEW DELHI;
July 25, 2006.

MOHAN SINGH

BILL NO. 81 OF 2006

A Bill to provide for measures for the development, storage and marketing of fruits and vegetables and their products and for matters connected therewith.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows :—

Short title,
extent and
commencement

1. (1) This Act may be called the Fruit and Vegetable Board Act, 2006.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and for different States or different parts thereof.

Declaration as
to expediency
of control by
the Union

2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the fruit and vegetable industry.

3. In this Act, unless the context otherwise requires,—

Definitions

- (a) "Board" means the Fruit and Vegetable Board established under section 4;
- (b) "dealer" means a dealer in fruits and vegetables;
- (c) "Executive Director" means the Executive Director appointed under section 6;
- (d) "export" and "import" mean, respectively, taking out of and bringing into India by land, sea or air;
- (e) "Government" means the Central Government;
- (f) "member" means a member of the Board and includes the Chairman; and
- (g) "prescribed" means prescribed by rules made under this Act.

4. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Act, a Board to be called the Fruit and Vegetable Board.

Establishment and constitution of Fruit and Vegetable Board.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.

(3) The head office of the Board shall be at New Delhi and the Board may, with the previous approval of the Government, establish offices or agencies at other places in or outside India.

(4) The Board shall consist of the following members, namely:—

(a) A chairman to be appointed from amongst the fruit and vegetable growers by the Government in such manner as may be prescribed;

(b) three members of Parliament, of whom two shall be nominated by the Speaker of the House of the People and one by the Chairman of the Council of States;

(c) five members to be appointed by the Government to represent respectively:—

(i) the Ministry of the Central Government dealing with agriculture;

(ii) the Ministry of the Central Government dealing with commerce;

(iii) the Ministry of the Central Government dealing with finance;

(iv) the Ministry of the Central Government dealing with industrial development; and

(v) the Indian Council of Agricultural Research;

(d) four members to be appointed by the Government from amongst the growers of fruits;

(e) four members to be appointed by the Government from amongst the growers of vegetables; and

(f) two members to be appointed by the Government from amongst the dealers and exporters of fruits and vegetables.

(5) The Board shall elect, from amongst its members, a Vice-Chairman who shall exercise such of the powers and perform such of the functions as may be prescribed and as may be delegated to him by the Chairman.

(6) The term of office of the members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed.

(7) The Executive Director and any such officer of the Government (not being a member of the Board), as is deputed by the Government in this behalf, shall have the right to attend the meetings of the Board and take part in the proceedings thereof but shall not have the right to vote.

(8) The Board may associate with itself in such manner and for such purposes, as may be prescribed, any person whose assistance or advice it may require in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated, but shall not have the right to vote.

Salary and allowances and other conditions of service of Chairman.

5. The Chairman shall be entitled to such salary and allowances and such conditions of service as may, from time to time, be determined by the Government.

Appointment of Executive Director, etc.

6. (1) The Government shall appoint an Executive Director to exercise such powers and perform such duties as may be prescribed or as may be delegated to him by the Chairman.

(2) The Government shall appoint a Secretary to the Board to exercise such powers and perform such duties as may be prescribed or as may be delegated to him by the Chairman.

(3) The Executive Director and the Secretary shall be entitled to such salaries and allowances and such conditions of Service in respect of leave, pension, provident fund, and other matters as may, from time to time, be determined by the Government.

(4) Subject to such control, restrictions and conditions as may be prescribed, the Board may appoint such other officers and employees as may be necessary for the efficient performance of its functions.

(5) The Chairman, the Executive Director, the Secretary and other officers and employees of the Board shall not undertake any work not connected with their duties under this Act except with the prior permission of the Government.

Committees of the Board.

7. (1) The Board may appoint such committees as may be necessary for the efficient discharge of the duties and performance of its functions under this Act.

(2) The Board shall have the power to co-opt as members of any committee appointed under sub-section (1), such number of persons who are not members of the Board as it may think fit and the persons co-opted shall have the right to attend the meetings of the committee and take part in the proceedings of the committee but shall not have the right to vote.

Functions of the Board.

8. (1) It shall be the duty of the Board to promote by such measures as it thinks fit, the development, storage and marketing of fruits and vegetables and the fruit and vegetable products industry.

(2) Without prejudice to the generality of the provisions of sub-section (1), the measures referred to therein may provide for—

(a) formulating policies for overall development and improvement of production, quality, storage and marketing of fruits and vegetables;

(b) fixing annual production targets of fruits and vegetables;

(c) review of measures for attaining production targets, viz., supply of inputs like fertilizer, water supply, plant protection measures, credit facilities, etc.;

(d) fixing import quotas for improved seeds;

(e) advising the Government on extension of cold storage facilities;

- (f) review of the price trends of fruits and vegetables;
- (g) development of fruit and vegetable products industries;
- (h) review of the cost of production of fruits and vegetables and the prices received by the fruit and vegetable growers and to advise Government on the need for price support and other measures to ensure fair prices to the growers;
- (i) regulation, control and promotion of the export of fruits and vegetables and fruit and vegetable products and review of the grading of fruits and vegetables;
- (j) collection and maintenance of statistics on any matter relating to fruits and vegetables and fruit industries;
- (k) performing such other functions as the Government may, from time to time, direct.

9. (1) The Government may, by notification in the Official Gazette and for reasons to be specified therein, direct that the Board shall be dissolved from such date and for such period as may be specified in the notification:

Provided that before issuing any such notification, the Government shall give a reasonable opportunity to the Board to make representation against the proposed dissolution and shall consider the representations, if any, of the Board.

Dissolution of the Board.

(2) When the Board is dissolved under the provisions of sub-section (1),—

- (a) all powers and duties of the Board shall, during the period of dissolution, be exercised and performed by such person or persons as the Government may appoint in this behalf;
- (b) all funds and other properties vested in the Board shall, during the period of dissolution, vest in the Government; and
- (c) as soon as the period of dissolution expires, the Board shall be reconstituted in accordance with the provisions of this Act.

10. (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the powers and functions of the Vice-Chairman of the Board;
- (b) the term of office and other conditions of service of the members, the manner of filling up of vacancies of the members among, and the procedure to be followed in the discharge of their functions by the members;
- (c) holding of minimum number of meetings of the Board every year;
- (d) the circumstances in which and the authority by which a member may be removed;
- (e) the power which may be exercised and the duties which shall be performed by the Executive Director and the Secretary;
- (f) the procedure to be followed at the meetings of the Board for the conduct of business and the number of members which shall form the quorum at a meeting;
- (g) the maintenance of records of business transacted by the Board and the submission of copies thereof to the Central Government;
- (h) the power of the Board, its Chairman, the Executive Director and Committees of the Board with respect to the incurring of expenditure;

- (i) the conditions subject to which the Board may incur expenditure outside India;
- (j) the preparation of budget estimates of receipts and expenditure of the Board and the authority by which the estimates are to be sanctioned;
- (k) the form and the manner in which the accounts should be maintained by the Board;
- (l) the deposit of the funds of the Board in Banks and the investment of funds;
- (m) the conditions to be observed by the Board in borrowing the money;
- (n) the collection of any information or statistics in respect of fruits and vegetables;
- (o) any other matter which has to be, or may be, prescribed by or provided for by rules under this Act.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to make regulations.

11. (1) The Board may make regulations not inconsistent with this Act and the rules made thereunder for enabling it to discharge its functions under this Act.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the procedure to be followed at the meetings of the committees appointed by the Board and the number of members which shall form a quorum at a meeting;
- (b) the delegation to the Chairman, members, Executive Director, Secretary or other officers of the Board, or any of the powers and duties of the Board under this Act;
- (c) the travelling and other allowances, leave and other conditions of service of officers (other than those appointed by the Government) and other employees of the Board;
- (d) the maintenance of the accounts of the Board;
- (e) the maintenance of the registers and other records of the Board and its various committees;
- (f) the appointment by the Board of agents to discharge, on its behalf, any of its functions;
- (g) the persons by whom, and the manner in which, payments, deposits and investments may be made on behalf of the Board.

(3) No regulation made by the Board shall have effect until it has been approved by the Government and published in the Official Gazette, and the Government, in approving a regulation, may make any change therein which appears to it to be necessary.

(4) The Government may, by notification in the Official Gazette, cancel any regulation which has been approved and thereupon, the regulation shall cease to have effect.

STATEMENT OF OBJECTS AND REASONS

The fruits and vegetables are grown in the country on an extensive scale. With the establishment of Horticulture Directorates in the States and the encouragement given to horticulture, the production of fruits and vegetables is growing day by day. But there are no adequate storage or good transport facilities for these commodities. The export and import policies are also not well defined for these items.

At present there is a great scope for exporting of fruits and vegetables and the products based on processing of fruits and vegetables. Therefore, to encourage production, storage and export of fruits and vegetables and their products, it is expedient that the Union Government takes under its control, the development of fruits and vegetables and the fruit and vegetable products industry.

Hence this Bill.

NEW DELHI;
July 25, 2006

MOHAN SINGH

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the establishment of the Fruit and Vegetable Board. Clause 5 provides for payment of such salary and allowances to the Chairman of the Board as may be determined by the Government. Clause 6(3) provides for payment of salaries and allowances to the Executive Director and the Secretary to the Board. Clause 6(4) provides for appointment of such other officers and employees as may be necessary for efficient performance of the functions of the Board. Clause 7 provides for appointment of committees and co-option of such persons as members thereon who are not members of the Board. Such members of the Committees will have to be paid travelling and other allowances for attending the meetings of the Committees. Under clause 8, the Board will take such measures as it thinks fit to promote the development and improvement of production, storage and marketing of fruits and vegetables and the fruits and vegetable products industry. It is estimated that an annual recurring expenditure of about rupees five crore is likely to be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees ten crore is also likely to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Clause 11 empowers the Fruit and Vegetable Board to make regulations, with the previous approval of the Central Government and by notification in the Official Gazette, not inconsistent with the provisions of the Bill and the rules that may be made thereunder.

The matters in respect of which rules or regulations may be made pertain to procedure or administrative detail only and as such the delegation of legislative power is of a normal character.

BILL 78 OF 2006

A Bill further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

Short title

An amendment
of section
125

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 2006.

2. In section 125 of the Code of Criminal Procedure, 1973, in sub-section (1), for the words "at such monthly rate", the words "at such monthly rate, which shall not be less than half of the monthly income of that person," shall be substituted.

2 of 1974

STATEMENT OF OBJECTS AND REASONS

No minimum amount of maintenance allowance has been provided under section 125 of the Code of Criminal Procedure, 1973 which causes problem to the dependents. Earlier it was rupees five hundred which was, rightly, done away with, in the year 2001. But a reasonable minimum amount of monthly allowance has to be fixed so that the element of ambiguity and arbitrariness is removed and the dependents have a reasonable amount to secure their livelihood.

Therefore, it is proposed to provide for atleast half of the monthly income as maintenance allowance, which appears to be a reasonable amount for all sections of the society.

Hence this Bill.

NEW DELHI;
August 25, 2006.

BACHI SINGH RAWAT

P.D.T. ACHARY,
Secretary-General.